

1 to Peter Price.

2 Q And who did Behrooz report to?

3 A Mr. McKinnon.

4 Q Okay. And after Mr. McKinnon left, was he ever --
5 was his position ever filled?

6 A Mr. McKinnon's?

7 Q Yeah.

8 A Not really.

9 Q Or were you supposed to be taking over some of his
10 functions?

11 A I was supposed to be taking over some of his
12 functions, yes.

13 Q Now when Mr. McKinnon -- after Mr. McKinnon left,
14 did you attempt to supervise Mr. Nourain in his engineering
15 microwave responsibilities?

16 A No.

17 Q Now Mr. Ontiveros, I'd like you to -- there's a
18 volume before you a thicker volume. I'd like you to go to
19 tab 11 sir.

20 JUDGE SIPPEL: Is this the Time Warner Exhibits?

21 MR. BEGLEITER: Yes the Time Warner Cablevision.

22 I'm sorry. I got used to referring to it as the thick
23 volume. I will now refer to it as the Time Warner. I think
24 it will be better if you actually go to tab 14.

25 //

1 BY MR. BEGLEITER:

2 Q Now sir you see that -- are you familiar with the
3 document that's at Tab 14 of the Time Warner Cablevision set
4 of exhibits?

5 A Installation progress report?

6 Q Yeah.

7 A Yes.

8 Q Is that something that you -- your department
9 would have prepared?

10 A Yes

11 Q Did you prepare it?

12 A Yes.

13 Q What was the purpose of preparing this document?

14 A It was to keep track of new subscriber
15 installations.

16 Q When this document was completed, was it
17 distributed?

18 A Yes.

19 Q And who would -- who and where would it be
20 distributed?

21 A It was distributed at our weekly executive staff
22 meetings as well as within our department.

23 Q When did you -- about what year did you start
24 preparing these installation -- these installation progress
25 reports?

1 A Some time after Bruce left.

2 Q After --

3 A '93.

4 Q After mid '93?

5 A Right. Although he did have something like this.

6 Q Sir, was the purpose of this document to track
7 licenses?

8 MR. HOLT: Objection. Leading.

9 JUDGE SIPPEL: I'm going to overrule that
10 objection. Can you answer the question?

11 BY MR. BEGLEITER:

12 A Well it is now.

13 Q I'm asking okay before May of '95, was the purpose
14 of this document to track licenses?

15 A No.

16 Q Okay. What was the purpose of this document?

17 A To again to track subscriber installations.

18 Q And it was -- was it to inform the people at the
19 meeting as to the status of these installations?

20 A Yes.

21 Q Has this document -- has this document changed
22 since -- since '95?

23 A Yes it has. We --

24 Q Well let me ask you the question. Why has it
25 changed?

1 A Why has it changed? Because we now have a good
2 compliance program in place and this is -- this is part of
3 it.

4 Q Are you saying that it's now used to track
5 licenses?

6 A Yes.

7 Q Okay.

8 A Well it's now used to show that we do indeed have
9 authority to operate a path.

10 Q Do you remember when this change occurred?

11 A Summer of '95 I think probably August or September
12 was probably the first building.

13 Q Sir did there come a time -- did there come a time
14 when you learned that Liberty had been activating paths
15 without proper FCC authority?

16 A Yes.

17 Q When did you learn this?

18 A Some time at the end of April.

19 Q Of what year?

20 A 1995.

21 Q Did you have inkling before the end of April 1995
22 that Liberty had been transmitting without proper FCC
23 authority?

24 A No.

25 Q Tell me, sir how you found out in late April of

1 1995 that there had been this unauthorized transmission?

2 A In a meeting.

3 Q And who attended the meeting?

4 A Behrooz Nourain, Peter Price and Edward Milstein.

5 Q Okay. And what specifically did you learn at this
6 meeting?

7 A That we might have some buildings out there that
8 were turned out before we had authority to turn them on.

9 Q What was your reaction to this -- this
10 information?

11 A Shock, pit in my stomach. You know that we had
12 done something wrong.

13 Q Did you have any thoughts about your -- about your
14 supervision of Mr. Nourain at the time?

15 A Maybe not at that moment, but sure afterwards you
16 kick yourself for not getting involved a little bit more but
17 not at that moment. That moment was just that we were had
18 made a big mistake and were concerned about it.

19 Q Did you know for certain at this first moment that
20 there had been unauthorized transmissions?

21 A No not for sure.

22 Q What was done as a result -- after the meeting?
23 What did you do after the meeting with this regard?

24 A Well I know every company whatever we were doing
25 came to a complete halt. No more -- we didn't do any new

1 installations. I know we spent some of our time going back
2 to find out what indeed happened and spent a lot of time on
3 putting together a compliance program.

4 Q Now did your role regarding licenses change after
5 this meeting?

6 A Yes.

7 Q Now could you testify that prior to April of '95
8 you didn't feel you had any responsibility for its licenses
9 is that correct?

10 A Correct.

11 Q Now what happened after this -- this revelation?

12 A Well obviously learned a little bit more about it
13 and our as a company put together a compliance program. I
14 was ultimately the last person who had to make sure that we
15 signoffs by our compliance officer before we could actually
16 activate a building.

17 Q Now in -- prior to your understanding, prior to
18 this revelation at the end of April 1995, were you paying
19 attention at all to licensing issues?

20 A No.

21 Q Do you know what an emission designator is?

22 A No.

23 Q Do you know what it is now?

24 A Not really.

25 Q Did you know what it was in April '95?

1 A No.

2 Q Do you have any recollection of an emission
3 designator problem in late April 1995?

4 A No.

5 Q And if you had been told about an emission
6 designator problem what would your practice have been in
7 those days?

8 A Again if it was an FCC related item or something
9 to do with microwave, I probably didn't give it much
10 attention. Probably should have given it a lot.

11 Q You probably should have. Okay.

12 A I guess.

13 Q Would you ask other people to get involved with
14 the issue?

15 A It's poss --

16 MR. HOLT: Objection. The witness has no
17 foundation and it's entirely speculative. I mean the
18 witness has said he doesn't know what an emission designator
19 is and didn't know at the time. He's now asking him to
20 speculate what he might have done had he --

21 MR. BEGLEITER: I'm asking for his practice on
22 this type of issue.

23 JUDGE SIPPEL: Yeah you'll be able to cross
24 examine him. I'm going to overrule the objection.

25 //

1 BY MR. BEGLEITER:

2 Q What would your practice have been if you were
3 given an issue involving -- an issue such as emission
4 designator if that was brought to your attention?

5 A I -- probably would have taken it and you know
6 either decided whether I should file it or not file it --
7 again I didn't really give it a lot of attention
8 unfortunately.

9 Q Did you look upon as something you should act on?

10 A No. Not really.

11 Q All right. Sir, again you indicated that it was
12 in April of 1995 you had this -- this -- you became aware of
13 this -- that Liberty might be transmitting without
14 authorization is that correct?

15 A Correct.

16 Q I want to ask you. At any time prior to that, had
17 anyone ever encouraged you to activate a building without
18 authorization?

19 A No.

20 Q Had you been present when anyone else was
21 encouraged to activate a building without authorization?

22 A No.

23 Q Would you have activated a building without
24 authorization?

25 A No.

1 Q Would you have permitted Mr. Nourain to activate a
2 building if you had known that the building was not
3 authorized by the FCC?

4 A No.

5 Q Your Honor I think I'm finished.

6 JUDGE SIPPEL: All right. Before you -- before
7 cross begins let me just ask a couple of questions of a
8 background nature here to -- where was your office and where
9 was Mr. Nourain's office? At this time? You know the early
10 part of 1995?

11 THE WITNESS: We were in the same office maybe my
12 office changed a few times. But you know a door or two
13 away.

14 JUDGE SIPPEL: A door or two away? Same floor?

15 THE WITNESS: Yes.

16 JUDGE SIPPEL: But you were removed from
17 headquarters? From the main office, right? In other words
18 you were not in the same building with Mr. Milstein and Mr.
19 Price?

20 THE WITNESS: Correct.

21 JUDGE SIPPEL: Either of the Mr. Milsteins?

22 THE WITNESS: Hmmm mmm (affirmative).

23 JUDGE SIPPEL: And when you testify -- you said
24 you had this meeting with Mr. Nourain, Mr. Peter Price and
25 Mr. Edward Milstein when you first learned of the problem?

1 Correct?

2 THE WITNESS: Right.

3 JUDGE SIPPEL: Where was that meeting?

4 THE WITNESS: That was at the -- at Peter Price's
5 office.

6 JUDGE SIPPEL: It was in Peter Price's office?

7 THE WITNESS: Yes.

8 JUDGE SIPPEL: Did the whole meeting take place in
9 Peter Price's office?

10 THE WITNESS: Yes.

11 JUDGE SIPPEL: You didn't meet at all in Mr.
12 Milstein's office?

13 THE WITNESS: Not that I can remember.

14 JUDGE SIPPEL: And was Mr. -- now this was a
15 pretty important meeting though, right?

16 THE WITNESS: It turned out to be yes.

17 JUDGE SIPPEL: It turned out to be. Yeah was
18 Mr. -- was -- was Mr. Milstein's brother there?

19 THE WITNESS: No.

20 JUDGE SIPPEL: Just Mr. Edward Milstein?

21 THE WITNESS: Correct.

22 JUDGE SIPPEL: Why because he wasn't in town or he
23 just didn't join the meeting?

24 THE WITNESS: I don't know.

25 JUDGE SIPPEL: Okay that's it.

1 MR. BEGLEITER: Your Honor can I ask one question
2 now? I forgot to ask him.

3 BY MR. BEGLEITER:

4 Q I asked you Mr. Ontiveros about your reaction when
5 you first found out. Can you tell me what the reaction of
6 the other people in the room was?

7 A I -- the sense I got I guess maybe that's why I
8 felt the way I felt was I think it was the same all the way
9 around. Everybody was pretty shocked.

10 Q Okay, thank you.

11 JUDGE SIPPEL: Mr. Beckner?

12 MR. BECKNER: Yes, sir.

13 CROSS EXAMINATION

14 BY MR. BECKNER:

15 Q Thank you, Your Honor. Mr. Ontiveros you may
16 remember me from the deposition on May 21st. I represent
17 Time Warner Cable. My name is Bruce Beckner.

18 A Oh yeah.

19 Q At the end of your response to Mr. Begleiter's
20 questioning he was asking you whether or not anybody ever
21 encouraged you to turn on a building without a license and
22 you said no that had never happened. Correct?

23 A Correct.

24 Q Okay. But it's true, is it not that -- that there
25 was a always I think you used the term push -- push to turn

1 on buildings quickly after you had a contract. Isn't that
2 true?

3 A Yes.

4 Q I'm not suggesting that that means that you were
5 told to break the law. But you were encouraged to do these
6 things as quickly as possible. Isn't that correct?

7 A Correct. Except that I think it was more from a
8 sense that we were in a competitive environment. We had a
9 contract. We wanted to get things turned on.

10 Q Okay. Now I want to ask you -- I want to follow
11 up a little bit on the Judge's questions just a little bit.
12 You testified I think in response to his questions as well
13 as Mr. Begleiter's when you found out about at least the
14 possibility of unlicensed operations at a meeting with Mr.
15 Nourain, Mr. Price and Mr. Edward Milstein it was in Mr.
16 Price's office? Correct?

17 A Correct.

18 Q Before the meeting was held, did you have a phone
19 conversation with Mr. Edward Milstein where you told him
20 anything about this problem?

21 A Not that I can remember.

22 Q Okay. And did you -- did you have a discussion
23 with Behrooz Nourain before this meeting where Mr. Nourain
24 told you anything about this problem of unlicensed
25 operations?

1 A Not that I can remember.

2 Q Well Mr. Price's office is in a different building
3 than your office, correct?

4 A Correct.

5 Q In fact it's some distance away?

6 A Yes.

7 Q Okay. Do you remember the circumstances which
8 lead to your going to the meeting? I mean did somebody call
9 you and say we're going to have a meeting down here at 575
10 Madison or how did that come about?

11 A I don't remember. I mean I thought maybe it could
12 have been when I was down there already at a different staff
13 meeting, but I really don't recall.

14 Q Okay. So you don't even know whether it was a
15 special meeting that was called or whether you were already
16 there for some other purpose?

17 A Correct.

18 Q When the meeting was finished, did you go back
19 uptown to your regular office?

20 A You know I thought about that. I don't -- my only
21 recollection is finding out that information. Everything
22 else around that time I really don't recall.

23 Q And did you have any private conversations with
24 Mr. Nourain after this meeting where you know you discussed
25 further how it was that the company could have operating

1 without licenses?

2 A It's possible but I don't know.

3 Q Did you have any particular feelings toward Mr.
4 Nourain? Were you mad at him? Or disappointed in him? Or
5 anything like that?

6 A No I -- again things to do with microwave I never
7 really paid attention to. So I guess even after that
8 meeting just knowing that there was something wrong. I
9 don't remember if we I would be mad at him. I'm sure we
10 were all concerned that --

11 Q Well now there came a time did there not, after
12 the meeting, which it was confirmed that Liberty was running
13 microwave paths without a license is that correct?

14 A Correct.

15 Q And -- and you knew -- you learned that at some
16 point?

17 A Correct.

18 Q Okay. You -- can you tell us how you learned
19 that? In other words the confirmation that Liberty was in
20 fact operating without licenses in a few instances?

21 A No.

22 Q Do you know from whom you got this confirmation?

23 A No.

24 Q Do you remember anything about it? Whether it
25 was -- whether you got or you saw a memo or any kind of

1 writing that told you this? Or whether someone just told it
2 to you orally?

3 A Yeah I really don't remember. There was a little
4 bit of a transition there. You know from not having any
5 involvement to obviously having a lot more involvement. So
6 I guess as time went on I understood a lot more about you
7 know what had happened and how we were going to change
8 things.

9 Q I'd like you to take a look at -- at some
10 documents.

11 A Okay.

12 Q They're in the notebook there. One would be Time
13 Warner Exhibit 34.

14 JUDGE SIPPEL: Which is the last tab in that book.

15 BY MR. BECKNER:

16 Q Which is I think the last tab in the book. That's
17 right.

18 A Okay.

19 Q You see this is a memorandum that's addressed to
20 Behrooz Nourain and Peter Price from Mike Lehmkuhl. And
21 attached to it there's a two page list of addresses. Do you
22 recall seeing this memorandum or any part of it around April
23 28th 1995?

24 A No.

25 Q Do you recall seeing it at all before today?

1 A Yes I have seen it before today.

2 Q What were the circumstances under which you saw
3 it?

4 A I mean it was shown to me to ask me if I had seen
5 this before.

6 Q This was in preparation for your testimony today?

7 A Yes.

8 Q Is that a yes?

9 A Yes.

10 Q Okay I'm sorry. Thank you. I'd like you to turn
11 to -- there's a stack of documents that are I think in the
12 notebook, that are in a clip there at the end. And I'd like
13 you to turn to the top one on the stack which is Exhibit 36,
14 I'm sorry Exhibit 35.

15 A Okay.

16 Q And it's a copy of a memo from Behrooz Nourain to
17 Ed Milstein indicates you as a CC on that. Do you recall
18 receiving this memo either in its pure typed form or marked
19 up like it is now?

20 A I don't -- I don't remember.

21 Q Do you remember discussing this memorandum with --
22 with Mr. Price or Mr. Nourain?

23 A No.

24 Q Do you have idea why you would have received a
25 copy of this memorandum?

1 A No.

2 Q Does this memorandum refresh your recollection at
3 all about -- about either the meeting that you testified was
4 held or events right after the meeting?

5 A No it doesn't.

6 Q If you look at the addresses on this memorandum,
7 do you recognize any of these addresses as being addresses
8 that were actually in operation as of the date of the
9 memorandum?

10 A No.

11 Q I don't recall if you've been asked this or not
12 but forgive me if you have. Do you remember the date ore
13 the day of the week of this meeting that you've testified
14 to, that you had with Mr. Nourain, Mr. Price and Edward
15 Milstein?

16 A No, I don't.

17 Q Now you have -- you had a weekly staff meeting
18 with Mr. Price, Mr. Milstein and other department heads that
19 took place on Thursday as a regular meeting, isn't that
20 correct?

21 A Yes.

22 JUDGE SIPPEL: Which Mr. Milstein now? Ask him
23 which one?

24 BY MR. BECKNER:

25 Q Well with both Howard and Edward Milstein?

1 A Correct.

2 JUDGE SIPPEL: Thank you.

3 BY MR. BECKNER:

4 Q And at that meeting among other things you handed
5 out a -- an installation progress report every week, isn't
6 that right?

7 A Correct.

8 Q And you also handed out a weekly operations report
9 at those meetings or is that the same thing?

10 A Same thing.

11 Q Okay. Now do you remember whether or not whether
12 this separate with Mr. Nourain, Ed Milstein and Peter Price
13 took place on the same day when you would have had one of
14 those regular staff meetings?

15 MR. BEGLEITER: Your Honor, if I may. Mr. Beckner
16 keeps on referring to the staff meetings and I think that
17 has a different connotation to where they've already been
18 described. I think they're --

19 JUDGE SIPPEL: I'll sustain it as an objection.

20 MR. BEGLEITER: Yeah.

21 JUDGE SIPPEL: And maybe just lay a little
22 foundation Mr. Beckner.

23 MR. BECKNER: Okay.

24 MR. BEGLEITER: As to who attends.

25 //

1 BY MR. BECKNER:

2 Q The Thursday meeting that you held on a regular
3 basis every Thursday with Ed and Howard Milstein and Peter
4 Price and other department heads, what was the name they
5 used to refer to that?

6 A Executive Staff meeting.

7 Q Okay. All right. I'll use that name. The
8 question I want to ask you is whether or not you remember if
9 this meeting that you testified to earlier with Mr. Nourain,
10 Mr. Price and Edward Milstein took place on the same day as
11 the Executive Staff Meeting for that particular week?

12 A I don't recall.

13 Q It may have been or may not have been?

14 A I don't remember.

15 Q Now Mr. Nourain did not ordinarily attend the
16 Executive Staff Meetings did he?

17 A Correct.

18 Q Did you have separate operations department staff
19 meetings on a regular basis?

20 A Yes.

21 Q Was Mr. Nourain part of those?

22 A Yes.

23 Q Okay and how often did you have those meetings?

24 A Depending on the period of time, it was weekly and
25 maybe a couple of times a month. It really depended on who

1 we could get together and what was going on.

2 Q As a general matter, what did you discuss at those
3 -- at those meetings with the operations people?

4 A Construction, installations, maintenance issues,
5 service issues.

6 Q Now when if -- with Mr. Nourain at those meetings
7 did you discuss with him the progress of installing
8 microwave facilities and those places which you had been?

9 A Yes.

10 Q Okay. So it would be fair to say that you were
11 involved in coordinating Mr. Nourain's microwave
12 construction work? Would that be fair to say?

13 A No I mean there'd be a -- we'd have a date that
14 we'd agree on for a particular project and -- so
15 coordinating I guess.

16 Q Well if we take a hypothetical building it's a new
17 building for Liberty. And then what I'm asking you about is
18 your standard practice here is one of my questions. And
19 let's assume that in that building you had to build an
20 internal distribution system and you also had to build a
21 microwave receiving facility on the roof of that building.
22 Okay have we got that?

23 A Yes.

24 Q All right. Would it be a different group of
25 people in your organization who'd be responsible for

1 building the internal distribution system as compared to
2 putting the microwave dish up on the roof?

3 A Yes.

4 Q I see. And who would be responsible for making
5 sure that the microwave dish and that associated electronics
6 was put in place at about the time when the internal
7 distribution network was also built? Would that be something
8 you would do?

9 A No the microwave portion of it would be handled by
10 Behrooz. And you know that may or may not coincide with the
11 building distribution. The building distribution would be
12 handled by a construction supervisor or construction
13 manager.

14 Q Was there though -- for each new building that you
15 were going to serve, was there a target date by which all
16 the construction was supposed to be done? That is the
17 microwave antennae as well as the internal distribution
18 network?

19 A Yes.

20 Q Okay. And I'd like you to turn to Exhibit 14.

21 JUDGE SIPPEL: This is Time Warner Cablevision 14?

22 MR. BECKNER: Yes this is Time Warner Cablevision
23 14, Your Honor.

24 JUDGE SIPPEL: Okay.

25 //

1 BY MR. BECKNER:

2 Q Do you have that in front of you, Mr. Ontiveros?

3 A Yes.

4 Q Okay and this is a copy of an installation
5 progress report which is some -- something that you put
6 together, isn't that right?

7 A Correct.

8 Q And this is something that you did and handed out
9 at every weekly Executive Staff Meeting isn't that correct?

10 A Yes.

11 Q All right. I was looking at the first page of
12 this. There's a group of building under the title Current
13 Project. And I want you just -- and I realize this repeats
14 what you've testified at deposition, but I'd like the Judge
15 to hear.

16 I want you just to explain a couple of things for
17 us. First, let's just take the top building here, 55 West
18 End Avenue. Under status it says complete. Just tell us
19 what that means by "complete".

20 A Okay. It would mean that the construction was
21 done and that the you know that's for the most part new
22 installations were complete as well.

23 Q Okay.

24 A Maybe some people left, but.

25 Q Okay now. There's a column that has sub slash

1 Inst. And in this particular entry for 55 West End there's
2 104/104. Does that mean that 104 people were going to
3 subscribe to Liberty's service and in fact 104 had been
4 installed? Is that what that means there?

5 A Yes see well -- it means that we installed 104
6 people.

7 Q Okay. So and everybody who's installed is in fact
8 receiving the service, correct?

9 A Yes.

10 Q Okay. Now let's just jump down to Henry Hudson
11 Parkway. There you have 91 subs and 73 under the Inst.
12 column. Can you tell us what the difference means there?

13 A I'm sorry. 3755? You said the 91 and the 63?

14 Q Yeah.

15 A That would mean that we have a contract with the
16 building for 91 subscribers and that we have 73 people
17 actually installed.

18 Q Okay. So the rest of the people still need to be
19 hooked up. Is that correct?

20 A Correct.

21 Q All right. Now I want to skip down to the last
22 one in this first group here which is 441 East 92nd. And
23 there's a status line there that says in progress. Can you
24 tell us what that means?

25 A That would mean that either there was either or --

1 there was still some construction that was left or we were
2 in the process of actually doing installations.

3 Q Okay now. Here under -- for this building the
4 Brittany, you have under subs 7 and under Inst also 7. Does
5 that mean 7 people have already been hooked up?

6 A Yes.

7 Q Okay. And presumably the rest of the people are
8 being hooked up in the next week or two, isn't that what in
9 progress means?

10 A Yes if there are people who are who still need to
11 be hooked up.

12 Q Okay. Now I want to jump down here to the third
13 group -- the top of the third group Waterside Plaza. Under
14 the status column they have Inst. 3/15-Blg.30. Can you tell
15 us what that means?

16 A That means that building is either in construction
17 or completed construction I should say rather, and that a
18 target date is March 15.

19 Q To begin what? To begin installation?

20 A Installations.

21 Q Okay. And again when we're talk -- when we're
22 using the term installation here what we're talking about is
23 actually connecting a customer to the distribution system in
24 the building so he can get service right?

25 A Correct.

1 Q All right.

2 JUDGE SIPPEL: Let me be sure I've covered that.

3 That's the install -- that's the target date to commence the
4 installation or to complete the installation?

5 THE WITNESS: To start.

6 JUDGE SIPPEL: To start. Thank you.

7 BY MR. BECKNER:

8 Q Now if we go down on the same group of buildings
9 to 16 West 16, under the status line, they have -- you have
10 microwave installation. Can you tell us what that means?

11 A Microwave installation and marketing. It would
12 probably mean that the building construction was done, but
13 the microwave construction was not.

14 Q Okay. So that -- that building at that point is
15 not ready to be -- to have customers installed? Is that
16 correct?

17 A Right.

18 Q All right.

19 A And -- and the same could be said about all of
20 them in that block. I know they have dates, but it doesn't
21 necessarily mean that we started on those dates.

22 Q I understand.

23 A They're target dates.

24 Q Those are -- and this date is -- this date here at
25 the top of the page, February 23, 1995 would that be the